Editor's note: Appealed -- aff'd, Civ. No. 2437-71 (D. D.C. Feb. 6, 1973), 353 F. Supp. 1006, aff'd, per curiam, No. 73-1520 (D.C. Cir. March 12, 1974), 494 F.2d 1156

JAMES W. MCDADE

IBLA 70-138 Decided September 10, 1971

Oil and Gas Leases: Noncompetitive Leases--Oil and Gas Leases: Known Geologic Structure

> Noncompetitive offers to lease certain lands for oil and gas must be rejected where after the filing of the offers the land is determined to be within the known geologic structure of a producing oil or gas field, even though such offers may have been conditionally accepted prior to the inclusion of land within the limits of the geologic structure.

Rules of Practice: Standing to Appeal

> One who is notified by decision that his oil and gas lease offers are subject to rejection when and if the subject lands are leased to another whose conflicting offers have been conditionally approved, has standing to appeal as a party adversely affected, and such a party need not wait until the leases are actually issued before the right to appeal arises.

IBLA 70-138 :		ES 3624, ES 4167
JAMES W. MCDADE	:	Oil and gas lease offers
	:	rejected
	:	Affirmed

DECISION

The following noncompetitive public land oil and gas lease offers were filed in the Eastern States office of the Bureau of Land Management for all or part of sec. 17, and land accreted thereto in T. 23 S., R. 33 E., Louisiana Meridian, Plaquemine Parish, Louisiana.

Offer	Date Filed	Offeror
ES 3624	2-26-68	James W. McDade
ES 3673	3-18-68	Chevron Oil Company
ES 4167	5-17-68	James W. McDade
ES 4498	8-13-68	James W. McDade
ES 4501	8-14-68	James W. McDade
ES 5377	1-24-69	Texaco, Inc.
ES 5378	1-24-69	Texaco, Inc.
ES 5379	1-24-69	Texaco, Inc.
ES 5380	1-24-69	Texaco, Inc.

Although filed at different times, all of the offers embraced substantially the same surveyed land and lands accreted thereto, describing portions of surveyed sec. 17, and the associated accretions and relictions by metes and bounds. The descriptions were further complicated by the fact that there was an overlap or invasion of sec. 17 by sec. 18. In the course of adjudicating these offers the Eastern States office referred them to the Bureau's Chief, Division of Cadastral Survey, for a report as to the adequacy of the land descriptions employed and for identification of the accreted lands. On the basis of the report provided the Eastern States office on September 24, 1969, rendered a decision which held, in effect, that portions of the McDade offers ES 3624 and ES 4167 were acceptable, subject to McDade's execution of certain special stipulations required by the Corps of Engineers, which has jurisdiction of the surface of the lands involved. The decision also held that conflicting offers ES 5377-5380, and portions of ES 3673,

ES 4498 and ES 4501 adequately described the land and were otherwise in compliance with the regulations, but that, being junior, they would be subject to rejection if leases issued pursuant to the two McDade offers conditionally accepted.

Texaco, Inc. filed notice of appeal to the Director, Bureau of Land Management, pursuant to the then-prevailing appeal procedure. In the interim McDade filed executed copies of the special stipulations required by the Corps of Engineers, thereby fulfilling the condition imposed by the decision of the Eastern States office as prerequisite to the issuance of the leases. The Eastern States office, however, was precluded from issuing the leases to McDade because it lost jurisdiction over the matter upon the filing of the appeal by Texaco. Chevron Oil Company did not appeal.

Texaco was granted a 30-day extension of the period for filing its statement of reasons for appeal over the objection of McDade. During this period the record shows that employees of Texaco consulted with the Regional Geologist of the Geological Survey, Tulsa, Oklahoma, and supplied him with certain information. Subsequently, Texaco, Inc. filed its statement of reasons for appeal to the Director. This statement was limited to a discussion of the geology and the petroleum production record of the area in which the subject lands lie, which tended to demonstrate that these lands are within the known geologic structure of a producing oil field. The statement by Texaco also quoted the Regional Geologist as stating that the lands are within the known geologic structure and that the Geological Survey would not approve the issuance of any noncompetitive oil and gas leases for sec. 17.

McDade requested and was granted an extension of 30 days in which to respond to the allegations contained in the Texaco statement. Thereafter, McDade was granted an additional 10 days.

During this interval between the filing of the Texaco statement and McDade's response, the Regional Geologist, on behalf of the Director, Geological Survey, transmitted a memo dated January 29, 1970, to the manager, Eastern States office, in which he stated that all of secs. 15, 16, and 17, plus all of accretions to these sections, are federal lands and are within the undefined known geologic structure of the Southeast Pass field, and that this determination was effective November 9, 1969. Enclosed with the memo was a map delineating the boundaries of the lands referred to.

The Bureau's Office of Appeals and Hearings rendered its decision of March 19, 1970, by which the decision of the Eastern States office was vacated and all of the noncompetitive lease offers,

including McDade's, were rejected for the reason that none of the offers included all of the public domain available to a minimum of 640 acres, as required by 43 CFR 3110.1-3, formerly 43 CFR 3123.1(d), and because the determination by the Geological Survey that the lands are on the known geologic structure of the producing Southeast Pass field precludes them from noncompetitive leasing as a matter of statute.

McDade has appealed from this decision. Texaco has not. McDade's contentions are: (1) that Texaco had no right to appeal from the decision by the Eastern States office since that decision dealt only with the status of the Texaco offers and did not constitute a final adverse action with respect to those offers; (2) that the statement of reasons filed by Texaco failed to point out wherein the decision appealed from was in error; (3) that the Department's regulation requires summary dismissal of an appeal where no statement of reasons is filed, and that Texaco's document styled "Statement of Reasons" in fact contained no reasons for appeal; and, finally (4) that the leases were awarded to McDade by the decision of September 24, 1969, subject to conditions with which McDade complied, and the fact that Texaco, by using the administrative process, was able to delay the delivery of the leases until they were reported to be on a known geologic structure does not alter McDade's right to receive them.

McDade's contentions are not well founded. The conditional award of leases to McDade by the decision of the Eastern States office was also a conditional rejection of the Texaco offers and, as such, constituted an action adverse to Texaco's interest sufficient to serve as the basis for Texaco's appeal. See 43 CFR 4.410. To sustain McDade's argument would be to hold that Texaco would have had to wait until the lands were actually leased to McDade before its right to appeal would arise. Such a holding would be manifestly unfair.

It is true, as noted in the decision below, that Texaco's statement of reasons did not specifically point to any error recited in the decision of the Eastern States office. Instead it alleged facts which, when verified, demonstrated that the noncompetitive leasing of the land was not authorized by the statute. Perhaps, from a purely theoretical point of view, Texaco's complaint might more appropriately have been styled a "Protest" rather than an "Appeal", as it raised objections to the entire procedure rather than to the rejection of its own offers. But once the notice of appeal was filed the Eastern States office lost jurisdiction over the matter, leaving it for determination by the Director. See

M. J. Stansbury, A-29699 (September 25, 1963); George E. Conley, A-29634 (October 18, 1963). Even in the absence of an appeal the Director had authority to take up the matter and dispose of it. Angela Mathews Boos, A-28712 (September 21, 1962). Further, he was not limited in his consideration of the appeal to the particular matter raised by the appeal. Barney R. Colson, 70 I.D. 409 (1963).

Accordingly, having taken up the question of the propriety of the McDade offers, the Director was at liberty to consider them from all aspects. It was determined that not only were the offers deficient for noncompliance with the 640 acre rule, but that the land was not available for noncompetitive leasing.

McDade's final contention, i.e., that he was awarded the leases by the decision of the Eastern States office and was, accordingly, entitled to the delivery of them is equally fallacious. The leases were never executed on behalf of the United States, nor was the United States obliged by the decision to execute and deliver them after discovery of the facts that the offers did not conform to the requirements of the regulation; nor was the granting of the leases authorized by the statute in light of the new information regarding the geologic character of the land sought; each of which findings was independently fatal to the offers.

Lands on a known geological structure of a producing oil or gas field are not subject to noncompetitive leasing for oil and gas under the terms of sec. 17(b) of the Mineral Leasing Act, as amended, 30 U.S.C. 226(b) (1964).

The filing of offers for noncompetitive leases creates no vested rights in offeror, and when lands embraced in the offers are recognized as being within the known geological structure of a producing oil or gas field after the filing of the noncompetitive offers but before the issuance of the leases, the offers must be rejected, as required by 43 CFR 3101.1-1; formerly 43 CFR 3123.3(c), and no preferential rights would be conferred on the offeror. Solicitor's Opinion, 74 I.D. 285 (1967); Andrea R. Greyber, A-31040 (December 19, 1969). This being determinative of the matter, we need not consider the Bureau's holding that appellant's offers were also deficient with regard to the acreage in each, nor would any useful purpose be served by granting appellant's request for oral argument.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior (211 DM 13.5; 35 F.R. 12081), the decision appealed from is affirmed.

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Edward W. Stuebing, Member

We concur:

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Francis Mayhue, Member

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Frederick Fishman, Member